

IN THE MATTER OF ARBITRATION BETWEEN

MINNESOTA TEAMSTERS PUBLIC)	
& LAW ENFORCEMENT)	
EMPLOYEES UNION,)	ARBITRATION
LOCAL NO. 320)	AWARD
)	
)	
and)	
)	SIK ASSIGNMENT
)	GRIEVANCE
)	
GRANT COUNTY)	
)	BMS CASE NO. 06-PA-422
)	

Arbitrator: Stephen F. Befort

Hearing Date: May 4, 2006

Date post-hearing briefs received: June 18, 2006

Date of decision: July 20, 2006

APPEARANCES

For the Union: Brent E. LaSalle

For the Employer: Justin R. Anderson

INTRODUCTION

Teamsters, Local 320 (Union) is the exclusive representative of a unit of Social Service employees employed by Grant County, Minnesota (Employer). The Union, in this grievance, claims that the Employer violated the parties' collective bargaining agreement when it failed to assign Margaret Sik, the most senior applicant, to an open Financial Worker position. The Employer maintains that its appointment of another employee to that position was in compliance with the parties' agreement because that

employee had qualifications superior to those of the grievant. The grievance proceeded to an arbitration hearing at which the parties were afforded the opportunity to present evidence through the testimony of witnesses and the introduction of exhibits.

ISSUE

Did the Employer violate the parties' collective bargaining agreement by not assigning the grievant, the most senior applicant, to a Financial Worker vacancy?

RELEVANT CONTRACT LANGUAGE

ARTICLE IX. PROBATIONARY PERIOD, DISCIPLINE, & SENIORITY & LAYOFF

9.5 POSTING OF VACANCIES

- A. The County shall post all job vacancies or newly created positions for ten (10) calendar days. All interested employees may apply. If all other relevant qualifications are equal, the most senior applicant within the bargaining unit shall receive the position.
- B. The most senior qualified employee within a department shall receive the promotion.

FACTUAL BACKGROUND

Margaret Sik has worked for Grant County since 1997. During most of her tenure, she has worked in the position of an Office Support Specialist (OSS). According to that position's job description, an OSS "performs a variety of para-professional data entry, fiscal and office support functions." A major portion of the OSS work duties involve fiscally-related tasks, such as the processing of invoices and fund disbursements. The OSS also serves as the primary back-up for the Office Support Specialist, Senior (OSS, Sr.) position. That position, in turn, functions as the department receptionist and administrative support specialist. As the OSS job description summarizes, Ms. Sik "cover[ed] mail, rest and lunch periods, and paid time off [for the OSS, Sr.]" Her back-

up duties included “issuing EBT cards, selling transportation tickets, and issuing case numbers.” Ms. Sik, at one point, assumed the duties of the OSS, Sr. position for a period of 35 days to cover a period of extended leave.

In August 2005, the Employer posted a Financial Worker position for internal bidding. Two employees applied for the vacancy: Margaret Sik and Debra Mickelson. Ms. Mickelson had worked for the Employer in the OSS, Sr. position since 2002.

According to the Employer’s job description, a Financial Worker “performs a variety of tasks related to the determination of eligibility of clients for income maintenance programs and services, including the determination of grant amounts.” The principal activities of the position include interviewing clients, verifying information, and maintaining records concerning client eligibility. The minimum qualifications for the position include two years of study at an accredited post high school institution, three years of clerical experience or experience working with the public, and the passage of a written merit system test. The job description states that desired knowledge and abilities include “knowledge of agency programs, operations, policies and procedures” and “knowledge of the MAXIS and MMIS data information systems.”

Both candidates submitted written applications and the matter progressed through the County’s standard hiring protocol. Both applicants took and passed the written merit system test. Ms. Sik received a score of 83 on the test, while Ms. Mickelson received a score of 90. The two candidates also were interviewed by Joyce Pesch, Director of Social Services, and Zelda Avery, Human Resources Director.

The two interviewers met following the interviews and, after discussion, jointly completed a rating sheet for the two candidates. The interviewers awarded 65 points to

Ms. Mickelson and 60 points to Ms. Sik. The interviewers gave Ms. Sik fewer points in three categories: 1) knowledge of agency programs, operations, policies, and procedures; 2) knowledge of the MAXIS and MMIS data information systems; and 3) ability to remain objective. Ms. Pesch testified that the interview process confirmed what she already knew of the two candidates. Ms. Avery testified that while Ms. Sik acted complacently during her interview, Ms. Mickelson exhibited considerable passion for helping people in need.

The Employer ultimately hired Ms. Mickelson as the new Financial Worker. The Union filed a grievance claiming that the Employer's hiring decision violated Article 9.5 of the parties' collective agreement. The dispute has now progressed to this arbitration proceeding.

POSITIONS OF THE PARTIES

Union:

The Union contends that the Employer's failure to appoint Ms. Sik to the vacant Financial Worker position constituted a violation of Article 9.5 of the parties' agreement. The Union maintains that Ms. Sik and Ms. Mickelson possessed essentially the same qualifications for the Financial Worker position. Both candidates satisfied the education and experience requirements, both passed the merit system test, and both possessed the vast majority of the desired knowledge and abilities for the position. Since their "job relevant qualifications" were essentially equal, the Union concludes that Ms. Sik should have been appointed to the position by virtue of her greater seniority. Alternatively, the Union argues that any alleged deficiency in Ms. Sik's candidacy was the result of an

arbitrary and capricious interview process and the interviewers' predetermined dislike for Ms. Sik.

Employer:

The Employer claims that it did not violate Article 9.5 because Ms. Mickelson possesses better job relevant qualification for the Financial Worker position than Ms. Sik. The Employer contends that this conclusion is warranted because of Ms. Mickelson's superiority in the following four categories: test score, knowledge of the MMIS system, objectivity, and overall knowledge of agency programs and operations. Taken together, the Employer asserts, these superior qualifications are sufficient to trump Ms. Sik's greater seniority. The Employer further maintains that Ms. Mickelson's selection was not tainted by unfair procedures or bias.

DISCUSSION AND OPINION

The Pertinent Standard

The language of Article 9.5 governs this dispute. That provision states: "If all other relevant qualifications are equal, the most senior applicant within the bargaining unit shall receive the position."

Contractual seniority clauses come in many varieties. Some clauses preserve competitive positions for the bidding employee with the greatest seniority so long as that individual meets the minimum qualifications for the job in question. Other clauses are less deferential to seniority in that they only compel consideration of seniority along with other factors. The parties' contract in this instance adopts a mid-ground "relative ability" standard. Under this type of clause, "seniority becomes a determining factor only if the

qualifications of the bidders [for the position] are equal.” ELKOURI & ELKOURI, HOW ARBITRATION WORKS 873-74 (6th ed. 2003).

In interpreting this standard, the Union asserts that the term “equal” is not limited to situations where an exact equality exists, but encompasses situations where the relative qualifications of the candidates are “nearly” or “approximately” equal. The Union’s assertion in this regard is well taken, although it also is well recognized that management’s initial determination of relative qualifications is controlling unless shown to be unreasonable, arbitrary, or capricious. ELKOURI & ELKOURI, HOW ARBITRATION WORKS 877 (6th ed. 2003).

The Merits

Relative Qualifications

The Union initially argues that the Employer’s appointment of Ms. Mickelson is unreasonable because the two candidates have approximately the same qualifications and skills for the Financial Worker position. In support of this position, the Union marshaled the following evidence:

- 1) Both candidates satisfied the minimum qualifications of education and experience for the position. In this regard, each candidate had at least three years of clerical experience (or experience working with the public), and at least two years of study at an accredited post high school educational institution.
- 2) Both candidates achieved passing scores on the written test for the position.

- 3) Both candidates have demonstrated that they are substantially proficient in the skills associated with the OSS, Sr. position. While Ms. Mickelson may have been the individual appointed to that position, Ms. Sik spent approximately one-quarter of her time providing back-up coverage of those duties. Both parties acknowledged at the hearing that many of the skills associated with the OSS, Sr. position are relevant to successful performance of the Financial Worker position.

I believe that the Union, through this evidence, has adequately demonstrated that Ms. Sik meets the essential qualifications for the Financial Worker position. However, I do not think that the Union has carried its burden to show that the Employer's assessment of the candidates' relative qualifications was unreasonable. In this regard, I believe that the following factors, taken together, provided the Employer with a reasonable basis for concluding that Ms. Mickelson was better qualified for the position in question.

- 1) Ms. Mickelson had superior knowledge of agency programs, operations, policies, and procedures. As Director Pesch testified, the OSS, Sr. position is the "first face" with whom clients of the department interact. As such, the successful performance of this position requires a thorough knowledge about the overall operations of the department. While it is true that Ms. Sik performed many of the duties of the OSS, Sr. position on a back-up basis, Ms. Mickelson had an advantage on this score by virtue of being the person who primarily performs these functions on a day-to-day basis. Moreover, Ms. Pesch testified that Ms. Sik did not perform all of the duties of the OSS, Sr. position, but only those duties that needed to be

handled while Ms. Mickelson was on breaks. As a significant example, Ms. Sik, unlike Ms. Mickelson, did not process the combined application forms of clients seeking financial assistance. Since the processing of financial assistance applications is a core function of the Financial Worker position, Ms. Mickelson clearly had more job relevant experience with regard to this function.

- 2) In a similar vein, Ms. Mickelson had experience with the MMIS information system used in processing financial assistance coverage for the Medicaid program, while Ms. Sik did not. Although Ms. Sik testified that she has an aptitude for learning computer programs, it is not unreasonable for the Employer to prefer a candidate who already has demonstrated proficiency in the use of an important client eligibility processing tool.
- 3) Ms. Mickelson scored higher than Ms. Sik on the written merit system examination. Ms. Mickelson's examination received a score of 90, while Ms. Sik's test received a score of 83. In accordance with applicable Minnesota Rules, the merit system tests are to be "constructed to reveal the capacity of the applicant for the particular position for which the applicant is competing." Minn. Rule 9575.0450, Subp. 1.
- 4) Director Pesch also expressed some reservations concerning Ms. Sik's ability to serve department clients in a fair and objective manner. She testified that Ms. Sik had made some negative comments during a staff meeting with respect to the lifestyle of certain clients. Both Pesch and

Avery stated that Ms. Mickelson had good intrapersonal skills and exhibited compassion for the department's clientele.

Based upon the above, I do not think that the Employer acted unreasonably in concluding that Ms. Mickelson possessed superior job relevant qualifications for the Financial Worker position. While none of the factors noted above might warrant this conclusion when considered in isolation, when taken together they provide adequate justification for the Employer's selection decision.

Procedural Fairness

The Union also contends that the selection of Ms. Mickelson for the Financial Worker position was tainted by an arbitrary and capricious interview process. The principal deficiency, according to the Union, was the fact that Ms. Pesch and Ms. Avery rated the candidates jointly, a process that did not allow for an independent evaluation by each interviewer. The Union argues that this procedure was unfair because Ms. Pesch had a predisposed bias against Ms. Sik and dominated the joint evaluation process.

I do not believe that the record warrants a finding that the selection process was either unfair or biased. As to the former concern, there is nothing inherently unfair about a joint rating process. Ms. Avery testified that the rating outcome followed a thorough discussion of the candidates and that each interviewer supported the outcome.

On the issue of bias, the only evidence presented in support of the Union's contention was Ms. Pesch's statement that the interview process confirmed her pre-existing impressions about which candidate was better suited for the Financial Worker position. The Union claims that this statement evidences a preconceived bias that is inconsistent with an honest and fair evaluation process. I do not think that this is

necessarily so. As department director, Ms. Pesch was aware of the prior work performance of both candidates. She had first hand knowledge of their respective strengths and weaknesses. In particular, she had observed that Ms. Mickelson had superior skills in dealing with the public. It is neither possible nor desirable for a supervisor to ignore prior workplace performance when evaluating internal candidates for a position vacancy. The mere acknowledgement that a supervisor possesses pre-existing impressions of an employee's work performance, without more, does not constitute a per se bias sufficient to invalidate a competitive internal selection process.

AWARD

The grievance is denied.

Dated: July 20, 2006

Stephen F. Befort
Arbitrator